



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2013

Mr. Kipling D. Giles  
Senior Counsel  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

OR2013-05560

Dear Mr. Giles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 483749.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for three categories of information pertaining to a specified solar energy project: (1) the construction contract between CPS and OCI Solar Power L.L.C. ("OCI"), (2) materials submitted as part of the RFP process, and (3) the review and analysis of specified financials. You claim the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.133 of the Government Code. You also state the requested documents may implicate the proprietary interests of a third party. Accordingly, you state and provide documentation showing CPS notified OCI of the request for information and of the company's right to submit arguments to this office as to why its requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from OCI and from an attorney representing Nexolon Co., Ltd., and Nexolon America, L.L.C. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-01465 (2013). In Open Records Letter No. 2013-01465, we ruled, among other

things, that CPS must withhold the responsive proposal from disclosure under section 552.133 of the Government Code. We have no indication that the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, CPS must continue to rely on that ruling as a previous determination and withhold the previously ruled upon information in accordance with Open Records Letter No. 2013-01465. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information is not encompassed by Open Records Letter No. 2013-01465, we will consider the arguments against its release.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). The Texas Legislature amended section 552.133, which now provides in relevant part the following:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies; [and]

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts[.]

*Id.* § 552.133(a), (a-1)(1)(B)-(C). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

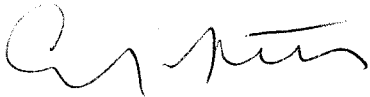
You state CPS is a city-owned utility. You inform us the submitted information consists of selection criteria for a power purchase agreement and pricing structure details for the solar-generated energy to be purchased. Further, you state the submitted information includes terms that were included in a current power purchase agreement. You assert release of the submitted information would result in competitive harm to CPS by providing its competitors with an advantage in the wholesale market and harm CPS's ability to obtain solar energy at the best value. The information at issue is not among the fifteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based on our review of the arguments and the submitted information, we find the submitted information relates to a competitive matter as defined under section 552.133(a-1). Thus, we conclude CPS must withhold the submitted information from disclosure under section 552.133 of the Government Code.<sup>1</sup>

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2013-01465, CPS must continue to rely on that ruling as a previous determination and withhold the previously ruled upon information in accordance with that ruling. CPS must withhold the submitted information from disclosure under section 552.133 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 483749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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